

REMARKS

Reconsideration and allowance of the subject application are respectfully requested. Upon entry of the amendments presented herein, claims 1-31 are pending, with claims 1, 3, 5, 7, 12, and 17 being independent claims. In this Reply, Applicant has amended independent claims 1, 3, and 5 to clarify an aspect of the invention recited therein. More specifically, these claims have been amended to clarify that the plurality of reference images include the same type of image, i.e., not necessarily the same image (e.g., images of the same person). For example, the plurality of reference images may be facial images of different people.

New dependent claims 22-32 have been added to further define aspects of the color-tone conversion based on a cumulative histogram recited in other dependent claims.

Prior Art Rejections**1. Segawa - Masayuki**

Claims 1-8, 12-13, and 17-18 stand rejected under 35 U.S.C. § 103 as allegedly being unpatentable over JP 09-172553A to *Segawa* in view of JP 08-221546 to *Masayuki*. This rejection is respectfully traversed.

Independent claim 1 is directed to an image processing method. The image processing method of claim 1 comprises the steps of: receiving selection of a target image having a desired color-tone from a plurality of reference images, each including the same type

of image, each having a different color-tone; receiving specification of an area in an image displayed; and changing a color-tone of a desired area including the specified area to the color-tone of the target image.

Independent claim 7 is directed to an image processing method that comprises the steps of: receiving selection of a target image having a desired color-tone from a plurality of reference images, each including an image of the same subject, each having a different color-tone; receiving specification of an area in a displayed image including an image of the same kind of subject as the subject in the target image; and changing a color-tone of a desired area including the specified area to the color-tone of the target image.

In rejecting these independent claims, the Examiner asserts that *Segawa* discloses an image processing method in which color-tone conversion is performed based on a target image having a desired color-tone selected from a plurality of reference images that include the same image, referring to the Abstract and paragraphs [0007]-[0009].¹

Although *Segawa* performs color image processing based on a reference image from a "storage means" that stores a plurality of reference images, Applicant fails to find a teaching from the cited

portions of *Segawa*, or the remainder of the reference, specifying that the reference images each include the same type of image (as recited in claim 1) or the same subject (as recited in independent claim 7).

Furthermore, the Examiner's reliance on the secondary reference, *Masayuki*, fails to make up for this deficiency.

To establish *prima facie* obviousness, all claim limitations must be taught or suggested by the prior art and the asserted modification or combination of prior art must be supported by some teaching, suggestion, or motivation in the applied reference or in knowledge generally available to one skilled in the art. *In re Fine*, 837, F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Thus, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). The prior art must suggest the desirability of the modification in order to establish a *prima facie* case of obviousness. *In re Brouwer*, 77 F.3d 422, 425, 37 USPQ2d 1663, 1666 (Fed. Cir. 1995). It can also be said that the prior art must collectively suggest or point to the claimed invention to support a finding of obviousness. *In re Hedges*, 783

¹ Applicant has assumed that the Examiner is relying on the English translation of these paragraphs attached to the Japanese language document.

F.2d 1038, 1041, 228 USPQ 685, 687 (Fed. Cir. 1986); *In re Ehrreich*, 590 F.2d 902, 908-09, 200 USPQ 504, 510 (CCPA 1979).

In view of the above, Applicant respectfully submits that the asserted combination of *Segawa* and *Masayuki* (assuming these references may be combined, which Applicant does not admit) fails to establish *prima facie* obviousness of independent claim 1 or independent claim 7, or any claim depending therefrom.

Furthermore, Applicant respectfully submits that claims 3, 5, 12, and 17, and their respective dependent claims, define over the asserted combination at least based on similar reasoning to that set forth above.

At least in view of the above, Applicant respectfully requests reconsideration and withdrawal of the Examiner's rejection under 35 U.S.C. § 103 based on the asserted combination of *Segawa* and *Masayuki*.

2. Segawa - Masayuki - Nakamura - Yoshimura

Claims 9-11, 14-16, and 19-21 stand rejected under 35 U.S.C. § 103 as allegedly being unpatentable over *Segawa* in view of *Masayuki*, and further in view of U.S. Patent 5,461,457 to *Nakamura* and U.S. Patent 6,463,172 to *Yoshimura*. This rejection is respectfully traversed.

As set forth on pages 3-4 of the Office Action, the Examiner relies on the additional secondary references, *Nakamura* and

Yoshimura, as allegedly teaching incremental features of the above-listed dependent claims. Applicant notes, however, that the Examiner's reliance on these references fails to make up for the deficiencies of the base *Segawa, Masayuki* combination discussed above. Therefore, the asserted combination of references (assuming these references may be combined, which Applicant does not admit) fails to establish *prima facie* obviousness of any of the pending claims.

Furthermore, although the Examiner relies on *Yoshimura* as allegedly teaching the cumulative histogram features of certain dependent claims, Applicant notes that the histograms of *Yoshimura*, illustrated for example in Figs. 2A-2C, quantify the number of pixels having particular pixel values extending along the horizontal axis. In *Yoshimura*, conversion tables as illustrated in Figs. 3 and 5 are obtained based on such histograms, and correction processing is performed on images using such conversion tables. Col. 4, lines 14-40. Applicant submits, however, that the histograms illustrated in Figs. 2A-2C of *Yoshimura* are not cumulative histograms in the sense described in embodiments of the present application, for example in Fig. 6, in which the histogram represents the cumulative values of density values. Applicant has added additional dependent claims 22-32 to emphasize these distinctions.

In view of the above, Applicant respectfully requests reconsideration and withdrawal of the Examiner's prior art rejection based on the asserted combination of *Segawa, Masayuki, Nakamura, and Yoshimura*.

Conclusion

Applicant respectfully requests that the Examiner enter the amendments presented herein.

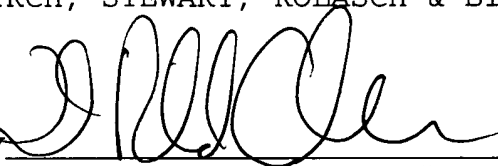
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Applicant respectfully petitions for a two (2) month extension of time pursuant to 37 C.F.R. §§ 1.17 and 1.136(a). A check in the amount of \$450.00 in payment of the extension of time fee is attached.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
D. Richard Anderson, #40,439

DRA/jdm
2091-0226P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000